

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

ANNUAL COMPLIANCE REVIEW, 2014

Docket No. ACR2014

RESPONSE OF THE UNITED STATES POSTAL SERVICE  
TO UPS MOTION FOR CONTINUED ACCESS TO NON-PUBLIC MATERIALS  
(April 3, 2015)

On March 27, 2015, UPS filed a motion seeking continued access (under the existing protective conditions) to non-public materials to which UPS had previously been granted access for purposes of analyzing matters at issue in Docket No. ACR2014. Specifically, UPS seeks continued access for a period of 90 days to a specified subset of materials to which it was earlier granted access. The Postal Service hereby responds.

Apparently recognizing that the Commission has now issued the Annual Compliance Determination, which would normally trigger the termination of access to these materials under Commission Rule 3007.41, UPS seeks continued access under the provisions of Commission Rule 3007.50. That rule (3007.50) allows continued access to “materials relevant to compliance under 39 USC 3653.” UPS cites two grounds upon which it seeks to retain the materials. First, the materials will “inform future comments by UPS regarding next year’s Annual Compliance Report,” and, second, will “also inform UPS’ forthcoming petition to the Commission on compliance-related issues.” UPS Motion at 2. As noted in the Motion, the petition alluded to was discussed in the UPS Initial Comments on the ACR, filed on February 2, 2015.

The Postal Service rejects any suggestion that the first rationale stated, usefulness in preparing comments regarding a future ACR, constitutes an adequate basis to allow continued access. Since parties and the Commission can always reasonably anticipate that another ACR will be filed in the next year, any party granted access to non-public materials in any ACR could cite such a rationale as a basis to hang on to ACR materials over the course of each succeeding year. In other words, acceptance of such an argument would, as a practical matter, destroy the intended limited duration of access and replace it with one of perpetual access. Therefore, the Postal Service would very strongly oppose the UPS motion if the only rationale offered in support were the possibility of informing comments in a subsequent ACR.

In fact, however, UPS has offered a second rationale. The suggestion that continued access would be useful to assisting preparation of a specified future rulemaking petition could, at least theoretically, constitute a valid basis upon which to seek such access. Of course, the concern here is not to allow such a possibility to be converted into a pretext employed by parties actually intending nothing more than to use Rule 3007.50 to embark on a general fishing expedition for sensitive information. In this instance, UPS has noted the serious efforts it has already undertaken to examine specific types of issues, and that, in conjunction with the long-standing history of UPS as a participant in Commission proceedings and a contributor to the analysis of a wide variety of issues, distinguishes this representation from vague statements of future intentions that might be submitted in other contexts by parties merely seeking to circumvent the narrow focus and limited duration inherent in the standard protective

conditions. Also of critical importance in evaluating the plausibility of the claimed intended use is the voluntary limitation by UPS of its request to an additional 90 days.

Nevertheless, the Commission will also need to evaluate whether a rulemaking proceeding as contemplated by the UPS Motion is likely to be appropriate. As noted, UPS in its Initial Comments to the ACR raised the specter of filing such a petition. In response, the Commission stated in the ACD:

At this time, the issues raised in the [UPS] comments do not warrant initiation of a proceeding to investigate the methodology the Postal Service uses to attribute total postal costs. The Commission agrees with the Postal Service that attributable costs related to investments in new equipment are properly distributed to Competitive products.

Annual Compliance Determination (March 27, 2015) at 85. On that basis, the Commission may conclude that the continued access sought by UPS is likewise not warranted.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Pricing & Product Support

---

Eric P. Koetting

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 277-6333  
April 3, 2015